

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
ISSUED TO WILLIAM CONNER AND
RESCINDED BY SAN JUAN COUNTY,

WILLIAM M. CONNER,

Appellant,

v.

SAN JUAN COUNTY,

Respondent.

SHB No. 83-48

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the request for review of a rescission of a shoreline substantial development permit earlier given to William Conner and others, came on for hearing before the Shorelines Hearings Board; David Akana, Lawrence Faulk, Beryl Robison, Rodney M. Kerslake, Nancy Burnett, and Gayle Rothrock (presiding) on February 17, 1984, at Lacey, Washington. The proceedings were electronically recorded and court reported by Nancy J. Swenson.

Appellants were represented by their attorney John O. Linde.

1 Respondents were represented by Prosecuting Attorney Eugene H. Knapp.

2 Witnesses were sworn and testified. Exhibits were admitted and
3 examined. Oral and written argument was received. From this the
4 Board makes these

5 FINDINGS OF FACT

6 I

7 In February of 1980, appellant Conner, owner of property on White
8 Point at Mosquito Passage near Roche Harbor on San Juan Island,
9 submitted an application for a substantial development permit to
10 construct an L-shaped dock within the shorelines of San Juan County.
11 The dock was ultimately intended for joint use by owners of four
12 adjacent parcels of land. There is one other dock nearby and a marina
13 at Roche Harbor a mile away. The affected shoreline is in a
14 conservancy designation under the county's Shoreline Master Program
15 and is a shoreline of statewide significance.

16 II

17 The application for a permit and detailed plans showed the dock
18 would include a 65-foot pier supported by piling, a 40-foot ramp, and
19 a 60-foot float secured with concrete anchors. The 4 simple pile
20 anchors which corner the float would be visible approximately 12 feet
21 above MLLW. The dock was designed to be approximately 6 feet above
22 the water at high tide and up to 18 feet above the water at low tide.
23 The float was designed to be 60 feet long, 10 feet wide, and rising 15
24 inches above water. The plans showed the structure would be situated
25 inside of the prominent rocky point which serves as the northern
26 terminus of the Passage embayment. The dock--later permitted--was r

built to these specifications.

III

In June of 1982, the permit application was denied by the San Juan County Commission. This action followed the normal planning review process and the earlier (April 1982) issuance of a declaration of non-significance. Conner did not have a signed joint-use-of-dock agreement on file at the time of the Commissioner's decision.

Being aggrieved, Conner sought review before the Shorelines Hearings Board and that request for review was formally heard October 18, 1982. The Board made a site visit that same day to assess visual impact and environmental factors in light of the proposed dock design. In December of that year the Board reversed the denial of a substantial development permit and remanded the permit to the County for issuance with certain precautions, as noted in the decision.

IV

The Board noted in its decision on that request for review, SHB No. 82-15, the importance of minimizing adverse visual impact in keeping with the Shoreline Management Act and Sections 5.08 and 6.03 of the San Juan County Shoreline Master Program (SJCSMP).

Additionally, the Board noted the County should require that the four property owners sign any substantial development permit application and file an agreement on joint use of the proposed dock. This would correctly effect Section 5.08 provisions of the SJCSMP.

V

On January 18, 1983, the San Juan County Commissioners approved

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1 the subject substantial development permit for a dock whose
2 construction drawings were the identical ones reviewed earlier by both
3 the Commissioners and the Shorelines Hearings Board. The County also
4 required the filing of a joint-use agreement to run with the property
5 by March 18, 1983. Additionally, the three other owners were required
6 to sign the substantial development permit application being acted
7 upon.

8 VI

9 In proceeding with development the appellants engaged their
10 engineering firm to make test piles and develop the final workable
11 construction arrangements. Apparently, it was ascertained there were
12 places in the underwater bottom which were not rocky and, as a
13 technical matter, a float secured by a 3-pile dolphin and a "stiff
14 leg" support could be installed. This meant shifting the pier, ramp,
15 and float from its original location inside the passage by some
16 significant number of feet, not exactly measured, and changing its
17 angle. The engineering drawings underwent two revisions in March and
18 a revision petition and drawings were sent to the Army Corps of
19 Engineers in early April. The Corps approved the revision of original
20 engineering design by Notice of Authorization of April 28, 1983. No
21 one applied for approval of revision to the substantial development
22 permit, under terms of the Shoreline Management Act.

23 VII

24 Construction proceeded during the spring and a dock was
25 constructed which had two 3-pile dolphins anchoring the float and,

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1
2 apparently, no stiff leg support. As depicted on the revised Corps
3 permit revision application drawings, the dolphins rise 15 feet above
4 the sea bottom, extending 12 feet above water at MLLW and 4.4 feet at
5 MHHW. This meant six piles driven into the substrate, a situation
6 slightly more damaging to the marine environment. Construction
7 activity did not escape the attention of neighboring property owners,
8 conscious of the scenic beauty of the area and of any unexpected
9 impairment of their views. Complaints were filed with the County
10 government.

11 VIII

12 Appellant Conner was notified on June 29, 1983, of violations of
13 the conditions of his substantial development permit. An exchange of
14 correspondence relative to various aspects of the permit followed.
15 Unsatisfied, the County scheduled a public hearing to consider
16 rescission of the permit on July 26, 1983. During the hearing
17 appellants claimed they could do nothing to change the dock but would
18 submit as-built drawings for approval. This not being in accordance
19 with the neighbors' and Commissioners' understanding of performance
20 obligations under terms of the permit, the Commissioners gave
21 appellants ten days to pledge to comply with the authorized permit or
22 face rescission.

23 Appellants did not elect to reconstruct their dock. At that time
24 appellants also did not satisfactorily comply with the condition
25 requiring official filing of a joint-use agreement to run with the
26 property, nor had the other three owners co-signed the permit

1 application.

2 The Army Corps of Engineers' inspection of the dock and site in
3 late summer resulted in a notice of deviation from approved plans to
4 appellant Conner. This action was noted as unlawful in the Corps'
5 letter of September 29, 1983.

6 San Juan County notified appellant Conner his permit was rescinded
7 on October 13, 1983, and appellant filed a request for review with
8 this Board on the first of November.

9 X

10 Appellant Conner did not timely secure the signature of the three
11 co-applicants or file a valid signed statement of joint use for the
12 dock. After the issue was belabored several months, the original
13 application was properly co-signed in late 1983. After exchanges of
14 correspondence, appellant's attorney filed selected relevant portions
15 of a document "Easements for Road Access, Dock, Water System, Sewer
16 System, Utilities, and Beach Access" with the County's Planning
17 Department in July (entered as Exhibit R3 before this Board). The
18 pages have no signatures, however. Those same pages incorporated as
19 an agreement and signed, or the full document from which they are
20 taken, would have satisfied the joint-use agreement requirement.

21 XI

22 Any Conclusion of Law which should be deemed a Finding of Fact is
23 hereby adopted as such.

24 From these Findings of Fact, the Board comes to these
25

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CONCLUSIONS OF LAW

I

The Shoreline Management Act governs these matters; namely, the proper issuance and rescission of a substantial development permit. RCW 90.58.

II

The U. S. Army Corps of Engineers is primarily concerned with preventing obstructions to navigation in navigable waters of these United States and is not involved in effecting and monitoring the Shoreline Management Act of the State of Washington. A separate permit and review process implements this shorelines statute.

III

Appellant did not comply with all the specific conditions of his permit. Additionally, appellant did not construct his dock as he represented he would do.

IV

In an earlier Board decision, SHB No. 77-25, Mineral Heights Association, Inc. v. San Juan County, et al., this point was made:

...the major issue herein is aesthetics. RCW 90.58.020 provides in part that:

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally.
(p.8)

And, in the Board's own words later in the opinion:

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1 We conclude that the 200-foot long by 6-foot
2 wide floating dock with eight pilings towering
3 as much as 12.5 feet above the water surface in
4 a small 200-foot by 400-foot natural, pristine
cove, on shorelines of statewide significance,
is not aesthetically compatible with the area.
(p.9)

5 The permit issued by the County, after remand from this Board, was
6 based on a specific and identified set of plans which minimized visual
7 impact and on policies which protected people's right to enjoy the
8 aesthetic qualities of natural shorelines.

9 V

10 The permitted dock was to be built in accordance with certain
11 attached construction drawings. As noted above, it was not built to
12 minimize visual impact. While the concrete-anchored dock may be more
13 difficult to build, it was approved because it would be sensible in
14 rocky subsurface area and damage the environment less. The dock was
15 not constructed to minimize impact and environmental damage and thus
16 violates provisions of Sections 5 and 6 of the SJCSMP and RCW
17 90.58.020.

18 Permitted uses in the shorelines of this state shall
19 be designed and constructed in a manner to minimize,
20 insofar as practical, any resultant damage to the
21 ecology and environment of the shorelines area and
any interference with the public's use of the water.
(last paragraph, RCW 90.58.020)

22 VII

23 The holder of a substantial development permit risks an
24 enforcement order or the rescission of said permit if the permittee
25 does not perform under the actual terms and conditions of the permit.
26 Such is the case here. In SHB No. 77-7, Tarabochia and Annich v. Town

of Gig Harbor, this Board stated:

Furthermore, a permit is limited to the construction and uses expressly sought and represented in the application for the permit. Well established principles of procedural due process notice requirements compel that result. The public generally, the Town and any citizen who has examined the application and noted the limited use to which the property is to be put, has a right to rely on the representation therein. (p.8)

RCW 90.58.140(8) specifically refers to a local government's right to rescind such permits:

Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with the conditions of the permit.

The permit actually issued to the applicant, Conner, stated:

This permit may be rescinded pursuant to RCW 90.58.140 in the event the permittee fails to comply with the terms or conditions thereof.

After notice, a public hearing, and the giving of a 10-day period in which to agree to remedy the situation, San Juan County properly exercised its authority to rescind the subject permit.

VIII

The permitted dock was never revised or amended and the dock was not built according to permit specifications. The appellants were aware of the differences in actual construction and in dock location through actual changes they elected to make without benefit of permit revision or amendment and San Juan County's action should be upheld.

IX

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The action of San Juan County rescinding appellant's permit #05-SJ-80 is affirmed.

DONE this 29th day of MARCH, 1984.

SHORELINES HEARINGS BOARD

Gayle Rothrock
GAYLE ROTHROCK, Chairman

David Akana
DAVID AKANA, Lawyer Member

Lawrence Faulk 3/29/84
LAWRENCE FAULK, Vice Chairman

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BERYL ROBISON, Member

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